

105TH CONGRESS
1ST SESSION

S. 1163

To amend the Truth in Lending Act to prohibit the distribution of any negotiable check or other instrument with any solicitation to a consumer by a creditor to open an account under any consumer credit plan or to engage in any other credit transaction which is subject to that Act, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 11, 1997

Mr. BRYAN introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Truth in Lending Act to prohibit the distribution of any negotiable check or other instrument with any solicitation to a consumer by a creditor to open an account under any consumer credit plan or to engage in any other credit transaction which is subject to that Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Unsolicited Loan
5 Consumer Protection Act”.

1 **SEC. 2. UNSOLICITED CHECKS PROHIBITED.**

2 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-
 3 ing Act (15 U.S.C. 1631 et seq.) is amended by adding
 4 at the end the following new section:

5 **“SEC. 139A. SOLICITATIONS FOR CONSUMER LOANS.**

6 “(a) IN GENERAL.—No consumer credit which is oth-
 7 erwise subject to this title may be extended by any creditor
 8 through the use of a check or other negotiable instrument
 9 which has been sent by the creditor to the consumer in
 10 connection with a solicitation by the creditor for such ex-
 11 tension of credit, unless the consumer has submitted an
 12 application for, or otherwise requested, such extension of
 13 credit before receiving the check or instrument.

14 “(b) CONSUMER NOT LIABLE FOR ANY UNSOLIC-
 15 ITED CHECK UNLESS THE CONSUMER ACTUALLY RE-
 16 CEIVES AND NEGOTIATES SUCH CHECK.—

17 “(1) IN GENERAL.—If any creditor violates sub-
 18 section (a) and includes an unsolicited check or
 19 other negotiable instrument in a solicitation to a
 20 consumer for an extension of credit which the
 21 consumer has not applied for or requested, the
 22 consumer shall not be liable for the amount of any
 23 such check or other instrument unless the consumer
 24 actually receives and negotiates such check or in-
 25 strument.

1 “(2) BURDEN ON CREDITOR.—Notwithstanding
2 any rule of evidence or other provision of law—

3 “(A) the issuance of a check or other nego-
4 tiable instrument by a creditor in violation of
5 subsection (a) creates a rebuttable presumption
6 that such check or instrument was not received
7 or negotiated by the consumer to whom it was
8 issued; and

9 “(B) the burden of proof, in any action by
10 a creditor to enforce liability of the consumer
11 for the amount of any such check or instru-
12 ment, shall be upon the creditor to show that
13 such check or instrument was received by the
14 consumer and was negotiated by the consumer
15 with the knowledge that such negotiation was
16 creating a liability for such amount.

17 “(3) INFORMATION ON LIABILITY CREATED IN
18 VIOLATION OF SUBSECTION (a) MAY NOT BE RE-
19 PORTED TO OR RECEIVED BY ANY CONSUMER RE-
20 PORTING AGENCY.—No information on any liability
21 alleged by a creditor to have been established
22 through the issuance of a check or other negotiable
23 instrument in violation of subsection (a) may be re-
24 ported to or received by any credit reporting agency
25 (as defined in section 603 of the Fair Credit Report-

1 ing Act) or included in any consumer credit report
2 under the Fair Credit Reporting Act.”.

3 (b) CLERICAL AMENDMENT.—The table of sections
4 for chapter 2 of the Truth in Lending Act is amended
5 by adding at the end the following new item:

“139A. Solicitations for consumer loans.”.

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